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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/354,058	07/15/1999	JOHN CRESCENTI	COMMV.028A	4549

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EXAMINER

COLBERT, ELLA

ART UNIT	PAPER NUMBER
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3694

NOTIFICATION DATE	DELIVERY MODE
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07/16/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	09/354,058	CRESCENTI ET AL	
	Examiner	Art Unit	
	Ella Colbert	3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-13, 15-17, 19-23, 25-27, 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-13, 15-17, 19-23, 25-27, 29, and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-4, 7-13, 15-17, 19-23, 25-27, 29, and 30 are pending. Claims 1, 4, 20, 23, and 27 have been amended in this communication filed 04/27/07 entered as Response After Non-Final Action.
2. The 35 USC 112, second paragraph rejections of claims 1, 4, 16, 20, 23, and 27 in the Office Action of 01/30/07 have been overcome by Applicants' amendment to the claims and is hereby withdrawn. However, there are still remaining 35 USC 112 second paragraph rejections as set forth here below.

After a thorough review, the following claim objections and rejections were found in the claims.

Claim Objections

3. Claim 1, 25, and 26 are objected to because of the following informalities: Claim 1, the first claim limitation recites "a plurality of backup cells each comprising:". This claim limitation should recite "a plurality of backup cells with each comprising:" or "a plurality of backup cells, each comprising:". Claims 25 and 26 depend from claim 20. These two claims would be better depending from claim 23. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3694

5. Claims 1, 4, 10, 16, 20, 23, and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-3, 20-22, 25-27, 29, and 30 recite "manager component", claims 4, 7-13, and 15 recite "first manager component" and "second manager component", claims 16, 17, and 19 recite "a first group of network computing devices", "a first network computing device", and "a second network computing device(s)", and claim 23 recites "media component". There is not any consistency among the claims limitations of the independent claims because of the recitations of "manager component", "first manager component" and "second manager component", "a first group of network computing devices", "a first network computing device", and "a second network computing device(s)", and "media component". Claims 16, 17, 19, and 23 should either have claim limitations reciting more closely to the other claims or be cancelled because these claims do not contain "manager component" or "first manager component" or "second manager component". None of the claims except claim 23 contain "media component".

Claims 1-3, 20-22, 25-27, 29, and 30 should either be amended to recite "first manager component" and "second manager component" or claims 4, 7-13, and 15 should be amended to recite "manager component". As for claims 16, 17, 19, and 23 they should contain either "manager component" or "first manager component" and "second manager component" and delete "media component" in claim 23 or cancel claims 16, 17, 19, and 23.

Claims 20 and 27 contain a “whereby” clause. Claim language, although not exhaustive, that may raise a question as to the limiting effect of the language in a claim are the following:

- (A) “adapted to” or “adapted for” clauses;
- (B) “wherein” clauses; and
- (C) “whereby” clauses. See MPEP 2111.04.

Claims 20 and 27 recite “..., whereby the first backup cell is capable of being controlled ...”. The usage of the term “capable” is not a positive claim recitation. The claim limitation to be a positive claim recitation, would be, for example “..., whereby the first backup cell is being controlled ...” or “..., whereby the first backup cell can be controlled ...”.

Also, claims 20 and 27 would be better to begin the last claim limitation with “a means for communicatively coupling a ...” to be in agreement with the other claim limitations.

Claims 2, 3, 7-9, 11-13, 15, 17, 19, 21, 22, 25, 26, 29, and 30 are also rejected because of their dependency from a rejected base claim.

Allowable Subject Matter

6. Claims 1-4, 7-13, 15-17, 19-23, 25-27, 29, and 30 will be allowable if rewritten or amended to overcome the claim objections and rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

As allowable subject matter has been indicated, applicants' reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Inquiries

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Wednesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 3, 2007


ELLA COLBERT
PRIMARY EXAMINER